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INTERNATIONAL COOPERATION IN COMBATING TRANSNATIONAL CRIME

QUESTION OF THE ELABORATION OF AN INTERNATIONAL CONVENTION AGAINST ORGANIZED TRANSNATIONAL CRIME

Report of the Secretary-General

Addendum

INTRODUCTION

1. In its resolution 51/120, the General Assembly, having taken note of the proposed draft United Nations framework convention against organized crime introduced by the Government of Poland (A/C.3/51/7, annex), requested the Secretary-General to invite all States to submit their views on the question of the elaboration of an international convention against organized transnational crime, including, *inter alia*, their comments on the proposed draft United Nations framework convention. In the same resolution, the General Assembly also requested the Commission on Crime Prevention and Criminal Justice to consider, as a matter of priority, the question of the elaboration of such an international convention, with a view to finalizing its work on that question as soon as possible, and to report through the Economic and Social Council to the Assembly at its fifty-second session on the results of its work on that question.

*E/CN.15/1997/1.

V.97-22326T

2. The present document contains the views on the question of the elaboration of an international convention against organized crime, as well as the substantive comments on the draft framework convention proposed by the Government of Poland, submitted by twenty-four States (Algeria, Argentina, Australia, Austria, Belarus, Bosnia and Herzegovina, Canada, Cuba, Cyprus, Ecuador, Estonia, Finland, Greece, Iran (Islamic Republic of), Japan, Malta, Mexico, Morocco, Panama, Philippines, Saudi Arabia, Spain, Turkey and United States of America). For ease of reference, the amendments and other proposals of the responding States appear in the draft framework convention (see annex) after the articles to which they refer.

VIEWS OF STATES ON THE ELABORATION OF AN INTERNATIONAL CONVENTION AGAINST ORGANIZED TRANSNATIONAL CRIME

3. Algeria stated that, in the light of the need to provide States with effective instruments for international cooperation in the fight against organized transnational crime, it supported the spirit and principles embodied in the draft framework convention and hoped that such a convention could soon be adopted. In view of the threat posed by organized transnational crime to the security and economy of States and to the right and well-being of citizens, Algeria was of the view that the prevention and control of organized crime should be a priority of the international community and that, because of the transnational character of that form of crime, law enforcement cooperation between States needed to be strengthened.

4. Argentina pointed out the importance that it had attached to the issue of the elaboration of a convention against organized transnational crime since a proposal along those lines had been made by its representatives at the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994. Argentina considered very favourably the positive steps made on that matter by the Commission at its fourth and fifth sessions and, more recently, through the submission of the draft framework convention and the adoption of General Assembly resolution 51/120. Argentina was of the opinion that, with a view to fostering the discussion on and the elaboration of the international convention, sufficient time should be made available to the in-sessional working group to be held on that issue during the sixth session of the Commission. On that occasion, Argentina would present its proposals on the various issues that such an international convention should deal with.

5. Australia reiterated its position that an argument could be made for concluding an international convention against organized transnational crime provided that some obstacles that might beset the negotiation of the instrument were dealt with in advance, such as finding an acceptable definition of organized transnational crime, avoiding the inclusion of elements in the convention that duplicate those in already existing agreements (for example, in the areas of extradition and mutual assistance in criminal matters) and overcoming the risk that achieving consensus on the content of the convention could make it so general that its effectiveness would be limited.

6. Austria continued to be sceptical about the feasibility of elaborating a useful convention against organized transnational crime, as organized crime was a complex phenomenon that raised a number of legal issues that were not adequately covered in the draft. The draft contained a number of far-reaching dispositions, some of which had not proved to be acceptable.

7. Belarus considered it well-advised that, because of the threat that organized crime posed to many countries, the international community should proceed with the elaboration of an international convention against organized transnational crime.

8. Bosnia and Herzegovina expressed its support for the efforts to develop an international convention on the struggle against organized transnational crime.

9. Canada reiterated its support to the activities of the Commission on Crime Prevention and Criminal Justice, particularly its role in respect of monitoring and implementing the Naples Political Declaration and Global Action Plan (A/49/748, annex, chap. I, sect. A), and expressed the view that a solution to the problems created by organized transnational crime required the cooperation of Member States at both the multilateral and bilateral levels. While continuing to expand and strengthen its existing web of bilateral mutual legal assistance treaties with other States, Canada also supported the effective implementation by Member States of the measures contained in international legal instruments, as well as the useful practical and operational measures recommended at various international forums. Canada pointed out that, while the idea of an "omnibus convention" on organized transnational crime was an attractive proposition that might have the effect of sending a strong public signal that the international community would not accept criminal abuse of the very positive global trend to loosen international boundaries, it had concerns about that proposal, particularly as far as the possible duplication with other legal instruments and cooperative mechanisms was concerned, at least until the issue of whether such a convention was intended to supersede or supplement existing instruments was clarified. Other questions of paramount importance to be solved in connection with the elaboration of an international convention against organized crime included the following: (a) definition: organized crime was becoming more and more of a laissez-faire endeavour in economic and social terms and a precise and static definition, even if one could be agreed among Member States, might well be counter-productive in the long run; (b) list of offences: while the inclusion in a convention of a list of specific offences to be covered might result in requests from a number of Member States for inclusion of matters of particular interest or for the deletion of items of particular sensitivity, a fixed list might crystallize the problem as it currently existed, but might not be able to address new problems as they emerged. On the other hand, the frequently raised problem of whether or not terrorism should be regarded as a manifestation of organized transnational crime might inject a sensitive political element that might impair the negotiations of an international instrument the success of which would require the production of tangible and practicable tools for law enforcement; and (c) criminalization: the type of conduct or action to be criminalized by States parties to such a convention might raise concerns regarding domestic implementation, since many States had constitutional or legal inhibitions on criminalizing associations with certain groups, as opposed to criminalizing specific conduct or action. Finally, Canada expressed the view that the ratification and implementation of existing international instruments represented a first step towards creating a comprehensive and successful legal framework for international cooperation against organized transnational crime. Should a majority of Member States decide to develop an international convention on the subject, Canada would favour a highly practice-oriented multilateral agreement on mutual legal assistance.

10. Cuba expressed its support for the elaboration of an international convention against organized crime and suggested that, when referring to organized crime, the term transnational should be included both in the title and in the text of the draft convention.

11. Cyprus expressed its support for the adoption of the draft framework convention and indicated that it would have no problems in implementing almost all of the provisions included therein.

12. Finland pointed out that its response to the elaboration of an international convention against organized crime was positive although some problems that might be caused by such a legal instrument should be avoided, such as the risk that the elaboration of such an international convention would drain resources from other international cooperation initiatives, the clarification of the legal scope of the convention, particularly regarding the meaning of concepts, such as terrorist acts or corruption of public officials. Nevertheless, Finland was of the view that the proposed draft framework convention was an appropriate basis for the elaboration of an international legal instrument or of a model treaty to be adjusted to the specific needs of countries.

13. Greece expressed its agreement with the elaboration of an international convention against organized crime.

14. The Islamic Republic of Iran proposed that the draft framework convention should also include a new paragraph emphasizing the need to extend cooperation to developing countries, so as to enhance their ability to confront organized crime. Furthermore, the draft should include provisions to encourage the ratification of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988[1] and strengthen the cooperation between the United Nations International Drug Control Programme and the Crime Prevention and Criminal Justice Division of the Secretariat, particularly on the issue of money-laundering. The Islamic Republic of Iran also suggested formulating new provisions to establish an administrative centre for the gathering and dissemination of experiences and information on the activities of organized transnational crime and to encourage the confiscation of proceeds of crime and their return to the States where the crime had been committed.

15. Japan pointed out that there was a need to identify specific issues and areas to be included in such an international instrument, as there seemed to be no common understanding among Member States on some substantive aspects. It suggested that the discussion on the elaboration of such a convention or conventions should start from the most basic elements on which agreement already existed. In connection with the draft convention submitted by Poland, Japan stated that it had a number of reservations on the provisions included therein.

16. Malta noted that the draft framework convention deserved to be supported as it was aimed at controlling crimes that seriously affected the international community.

17. Mexico welcomed the initiative of elaborating an international convention against organized crime, provided that such a convention would respect the sovereignty of States and their legislation.

18. Morocco was of the view that an international convention against organized crime would only be beneficial to Member States, especially if provisions that would facilitate investigation and exchange of information were included, and that its domestic legislation contained provisions aimed at preventing and controlling organized crime.

19. Panama pointed out that the draft framework convention included the most important items related to the subject and that its formulation was in line with existing international instruments on extradition and international cooperation.

20. Poland strongly supported the elaboration of a convention against organized transnational crime. In order to facilitate the international debate on the issue, it had presented the text of a draft framework convention to the General Assembly at its fifty-first session.

21. Saudi Arabia supported the idea of establishing a legislative machinery, under the auspices of the United Nations, that would be capable of elaborating international conventions, taking into due consideration specificities that existed between different social, cultural and juridical settings, so as to reflect mutual trust and cooperation in order to reach an acceptable formula that could be adopted by the international community as a whole.

22. Spain expressed the view that the draft framework convention under examination could represent, once finalized, adopted and ratified by Member States, an important legal instrument in the fight against a structured and dangerous form of crime that existed in many countries. Spain suggested that the scope of the convention should be broadened to include administrative measures, which would encourage the collaboration of the economic and financial system with law enforcement agencies in the prevention and control of money-laundering.

23. Turkey pointed out that the adoption of an international convention against organized crime would facilitate the harmonization of national legislation and would thus improve international cooperation in that field, providing an effective tool to combat organized crime at the global level. Turkey considered that such a convention should also include organized transnational crimes committed in the perpetration of or linked to terrorist acts and illicit trafficking in firearms, in chemical and nuclear materials and in children and other persons.

24. The United States noted that Member States had not had sufficient time to discuss the question of the elaboration of an international convention against organized crime and to exchange their views on the issue. It hoped that, on the occasion of the sixth session of the Commission, sufficient time could be devoted to the subject and that, between the sixth and seventh session of the Commission, Member States could evaluate all aspects of the possible negotiation of such an international convention. The United States expressed its appreciation to the Government of Poland for the time and effort that it had devoted to the preparation of the draft framework convention. It pointed out that the issues raised would enhance and facilitate the consideration by the Commission of the question of the elaboration of such an international convention. The United States noted that the resources available to both Member States and the United Nations were limited, particularly in the legal and law enforcement areas. Finally, the United States pointed out that, although it was engaged in a continuous process of seeking and establishing, whenever possible, more effective bilateral and multilateral means of combating all forms of organized transnational crime, it agreed that the time had come to give serious consideration to the elaboration of a single new international convention in that area. Work on any such convention should not duplicate previous efforts or definitional debates that had already occurred, such as those involving terrorism, and that might be reflected in existing international instruments.

Notes

[1]*Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November-20 December 1988*, vol. I (United Nations publication, Sales No. E.94.XI.5).

Annex

DRAFT UNITED NATIONS FRAMEWORK CONVENTION AGAINST ORGANIZED CRIME

The States Parties to the present Convention,

Concerned with the growing threat of organized crime, including the illicit traffic in narcotic drugs and psychotropic substances, money-laundering, illicit traffic in arms, nuclear material and explosive devices, motor vehicles, objects of art,

[Algeria proposed to include the flight of capital, terrorist acts and acts of corruption among the criminal offences listed above.]

[Cuba proposed to add the word "transnational" to the title and to any reference to organized crime.]

[Finland and the Philippines suggested to make the list of criminal activities of the preamble consistent with that of article 1.]

[Spain proposed to add a new sentence, also taking into account article 1, paragraph 1 (f), to make the paragraph read as follows: "Concerned with the growing threat of organized crime, whose activities include, *inter alia*, terrorism,...". (Spanish version: "Alarmados por la creciente amenaza de la delincuencia organizada, cuya actividad incluye, entre otras, el terrorismo,..."). Moreover, Spain noted that the acknowledgment of foreign judgements could imply the access to "international recidivism" while the absence, among the offences included in the convention, of the "acts of assistance to terrorism" ("actos de auxilio al terrorismo") would limit the possibility of investigating and sanctioning criminal acts.]

Concerned also with the increasing threat of organized crime to global security and criminal justice,

Aware that organized crime, in its national and transnational dimensions, destabilizes international relations, including interregional, regional, subregional and bilateral cooperation, by exerting influence on politics, the media, public administration, judicial authorities and the economy by establishing commercial or business-like structures,

[Cuba proposed to replace the first three preambular paragraphs with the following two paragraphs:

"Alarmed by the growing threat that organized transnational crime, in all its criminal manifestations, poses to security and criminal justice in all the world,

"Aware that organized transnational crime destabilizes international relations, ..."]

Convinced that a flexible and efficient framework for multilateral and bilateral cooperation is required to intensify law enforcement, criminal justice and crime prevention activities of Member States,

Recalling General Assembly resolution 49/159, in which it approved the Naples Political Declaration and Global Action Plan against Organized Transnational Crime,[a]

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[a] A/49/748, annex.

Recalling the recommendations of the Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Plan of Action against Organized Transnational Crime,[b]

Bearing in mind the United Nations model legal arrangements, such as the Model Treaty on Mutual Assistance in Criminal Matters,[c] the Model Treaty on the Transfer of Proceedings in Criminal Matters,[d] the Model Treaty on Extradition,[e] the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released[f] and the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property,[g]

[Finland proposed to make also reference to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.]

Mindful of other existing criminal justice and human rights instruments which provide legal protection to offenders and victims of crime,

Affirming that the matters regulated by the present Convention continue to be governed by the rules and principles of general international law,

Have agreed on the following:

Article 1

1. For the purpose of this Convention "organized crime" means group activities of three or more persons, with hierarchical links or personal relationships, which permit their leaders to earn profits or control territories or markets, internal or foreign, by means of violence, intimidation or corruption, both in furtherance of criminal activity and to infiltrate the legitimate economy, in particular by:

(a) Illicit traffic in narcotic drugs or psychotropic substances, and money-laundering, as defined in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;[h]

(b) Traffic in persons, as defined in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 2 December 1949;[i]

(c) Counterfeiting currency, as defined in the International Convention for the Suppression of Counterfeiting Currency of 20 April 1929;

(d) Illicit traffic in or stealing of cultural objects, as defined by the United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and

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[b]E/CN.15/1996//2/Add.1.

[c]General Assembly resolution 45/117, annex.

[d]General Assembly resolution 45/118, annex.

[e]General Assembly resolution 45/116, annex.

[f]General Assembly resolution 45/119, annex.

[g]*Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat.*

[h]*Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November-20 December 1988*, vol. I (United Nations publication, Sales No. E.94.XI.5).

[i]General Assembly resolution 317 (IV).

Transfer of Ownership of Cultural Property of 14 November 1970[j] and the International Institute for the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects of 24 June 1995;

(e) Stealing of nuclear material, its misuse or threats to misuse to harm the public, as defined by the Convention on the Physical Protection of Nuclear Material of 3 March 1980;

(f) Terrorist acts;

(g) Illicit traffic in or stealing of arms and explosive materials or devices;

(h) Illicit traffic in or stealing of motor vehicles;

(i) Corruption of public officials.

2. For the purpose of the present Convention, "organized crime" includes commission of an act by a member of a group as part of the criminal activity of such organization.

[Algeria proposed to add the flight of capital to the list of criminal activities included in article 1, paragraph 1.]

[Australia noted that the approach taken in the Naples Global Action Plan against Organized Transnational Crime, replicated in article 1, paragraph 1, acknowledged the difficulty inherent in arriving at a widely acceptable definition of organized crime, which would reconcile the different definitional approaches taken at the national level by States. Furthermore, paragraph 1 sought to link a number of listed crimes to organized crime without being too accurate (as was the case with crimes dealt with in multilateral conventions, such as drug trafficking, and with other crimes not established by multilateral conventions, such as trafficking in stolen motor vehicles) and without being too exhaustive. Australia also had difficulties in accepting the inclusion of terrorist acts within the list of crimes, because the existence of links between organized crime and terrorist crimes, as was the case with links between arms trafficking and trafficking in illicit drugs, had never been proved.]

[Austria pointed out that efforts to define "organized crime" or "criminal organizations" had not been very successful so far and that the approach taken in the draft to combine two different approaches might be successful as such. In practice, however, it created a number of problems since some of the areas of criminal activity, for example those included in article 1, paragraph 1 (d) and (h), appeared to be too far-reaching while the listing of crimes ("in particular ..."), given the legal consequences attached to them, was not sufficiently precise.]

[Cuba proposed that organized transnational crime should be considered the activities of two or more persons and that illicit trafficking in minors, human organs and illegal migrants, as well as mercenary, environmental and computer crimes, should be included in article 1, paragraph 1. Cuba also proposed to delete the reference to terrorist acts, noting that that form of crime should be the object of a separate convention.]

[Ecuador proposed to include in article 1, paragraph 1, after the words "internal or foreign", the words "with illegal means".]

[Estonia suggested that blackmail, public and secret theft, robbery and unlawful border-crossing should be mentioned in article 1.]

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[j]United Nations, *Treaty Series*, vol. 823, No. 11806.

[Finland proposed to specify the concept of organized crime by specifying some of its most relevant features, such as the intention behind criminal acts, division of work, profit-seeking and unification of offenders in advance for committing undefined acts of crime. Finland was also of the opinion that terrorism should not be dealt with by a convention against organized transnational crime, for its aims were different.]

[Greece pointed out that the list of criminal offences to be included in the concept of organized crime should have been supplemented by other offences, such as those contained in an article of Act 2331/1995 on Preventing and Controlling Money-Laundering and the Use of Proceeds of Crime, organized robbery, extortion, kidnapping, theft and embezzlement, fraud, theft of cargo, trafficking in human organs and pimping. The list could also be supplemented with crimes such as money-laundering, smuggling of illegal migrants, organized sexual exploitation of minors, illegal trafficking in patented inventions and crimes against the environment. Greece also noted that acts of terrorism should be excluded from the list of offences since terrorism was primarily a politically motivated crime, while organized transnational crime was mainly aimed at eroding international financial systems.]

[The Islamic Republic of Iran suggested clarifying the meaning of terrorist acts and distinguishing them from the legitimate acts of people defending their independence against foreign occupation.]

[Mexico suggested that the Commission on Crime Prevention and Criminal Justice should define concepts such as "organized crime", "terrorist acts", "illicit traffic in or stealing of arms and explosive materials or devices" and "corruption".]

[The Philippines suggested adding to the means of "violence, intimidation or corruption" mentioned in article 1, paragraph 1, fourth line, "fraud, deceit or misrepresentation and other similar scheme or other unlawful schemes", as they were also means of furthering criminal activity; moreover, it suggested adding to paragraph 1 (b), after the words "of 2 December 1949", the words "especially sexual exploitation of women and children". Finally, the Philippines suggested adding as paragraph 1 (j) the offence "computer-related crimes".]

[Spain pointed out that the definition of organized crime in article 1 was not in line with the one elaborated by its Supreme Court since it missed the essential requisite of temporary continuity of the criminal organization. Spain suggested that that qualification should be included, also by adopting the definition of organized crime elaborated by the working group on drugs and organized crime of the third pillar of the European Union. In connection with article 1 (a), Spain proposed to make a reference to money-laundering as an independent criminal offence, since the illicit proceeds generated by other crimes often outweighed those of illicit drug trafficking (Spain proposed the wording "El blanqueo de capitales procedente de cualquier delito grave"); it proposed to include a reference to criminal activities against minors, including child prostitution and pornography and illegal trafficking in minors and organs; and, finally, it pointed out that what was referred to in the draft convention as "trata de personas" (article 1 (b)), was in the past known in its legislation as "trata de blancas" and could nowadays be assimilated to the offence of illegal migration of foreign workers (inmigración ilegal laboral).]

Article 2

1. Each Contracting State shall make the offences, enumerated in article 1 of the present Convention punishable by appropriate penalties which take into account their grave nature.

2. Each Contracting State shall make punishable acts consisting of participation in or association with an organized crime group whose purpose it is to commit offences.

3. Each Contracting State shall take necessary measures to create the possibility of the confiscation of the profits deriving from organized crime.

[Algeria noted that its legislation was one of the few that already criminalized criminal association.]

[Australia pointed out that article 2, paragraph 1, would require Contracting States to make the offences listed in article 1 punishable by appropriate penalties. Such an obligation was already imposed on States parties to the multilateral conventions identified in article 1. If the provisions of article 2, paragraph 2, would relate solely to membership of a group without further involvement in the commission of a particular crime, Australia would be unable to comply with them because of the conflict with basic criminal justice principles, although it acknowledged that some States would be able to meet such an obligation. With reference to paragraph 3, Australia was of the view that a more detailed provision relating to the tracing, freezing and confiscation of the proceeds of crime would be required.]

[Austria noted that it was logical to expect a provision that obliged States to introduce a defined crime consisting of "organized crime" or "criminal organization" as conceived in article 1. Furthermore, the obligation contained in article 2, paragraph 1, to make the offences enumerated in article 1 punishable did not appear to be appropriate, especially since many of the offences described in article 1 were already punishable on the basis of other international instruments.]

[Finland pointed out that some of the obligations contained in article 2, particularly the one contained in paragraph 2, were not in accordance with some national legal systems and traditions, including its own. Finland also noted that some questions needed to be clarified, including those related to the detection and proof of the membership of a criminal group, the stage at which a person could be considered a member of an undetermined criminal group, and if the culpability for "association with an organized group" implied that also the payment of protection money to a certain group was punishable.]

[Mexico expressed the need for the draft convention to refer to "States Parties" rather than to "Contracting States" since the latter was an expression borrowed from private law. Mexico also suggested that article 2, paragraph 3, should include the possibility of charging taxes, fines or resulting civil liability and, therefore, the term "confiscar" should be replaced with "decomisar" in the Spanish version.]

[The Philippines proposed to reformulate article 2, paragraph 3, and suggested a new paragraph 4 so that the article would read:

"3. Each Contracting State shall take necessary measures for the confiscation of the profits derived from organized crime.

"4. Each Contracting State shall also consider entering into arrangements for the sharing of proceeds of crime in accordance with their respective domestic laws."]

[Spain pointed out that its criminal code criminalized all the criminal offences included in article 1, with the exception of traffic in persons, as already mentioned in the note to the preamble and proposed that, since article 2, paragraph 1, might be interpreted as a request to Contracting States to establish equivalent criminal sanctions, the possibility of introducing an ad hoc sanctioning system with which Contracting States should comply should be studied.]

Article 3

Each Contracting State shall consider establishing in its domestic penal legislation the possibility of criminal liability of corporate persons who derive profits from organized crime or function as a cover for the criminal organization.

[Australia pointed out that article 3 raised the difficult issue of the criminal liability of legal entities such as corporations and that, although Australian law did establish that form of liability, it was aware that such a criminal liability was not recognized under the domestic law of other countries.]

[Austria noted that the concept of criminal liability of corporate persons was still alien to its criminal law.]

[Ecuador proposed to substitute the word "tapadera" with "encubridores" or "testaferros" in the Spanish version.]

[Finland suggested that article 3 should also refer to civil or administrative liability.]

[Greece pointed out that its legal system did not foresee corporate criminal liability and therefore article 3 would require the reform of the criminal justice system.]

[Mexico proposed to replace the term "tapadera" with "encubrimiento" in the Spanish version.]

Article 4

Each Contracting State shall take legislative measures to recognize, in their domestic law, the previous foreign conviction for offences referred to in article 1 of the present Convention for the purposes of establishing the criminal history of the alleged offender.

[Australia suggested that the application of the provision in article 4 should be clarified because, by referring to "the criminal history of the alleged offender", it seemed to be meant to apply to investigations and prosecutions.]

[Austria recalled that already on the occasion of the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994, it had expressed the view that international cooperation in the investigation and prosecution of serious forms of crime could be better enhanced by a simplification of the practical procedures concerning exchange of information rather than through an international convention and that it was not clear how article 4 would improve the situation with regard to that issue.]

[Finland proposed to replace the words "the previous foreign conviction" with the words "previous foreign conviction" and noted that the draft convention did not include any provisions on the manner in which the information on the criminal history of the alleged offender should be obtained, nor did it define the countries from which the information could be obtained.]

[Malta noted that to accept article 4 its legislation needed to make reference to foreign convictions.]

[The Philippines stated that, although the provision in article 4 implied the recognition of foreign judgements, which were not allowed by the Philippine's Rules of Court, it would agree to it.]

Article 5

1. Each Contracting State shall take legislative measures to establish its jurisdiction over the crimes mentioned in article 1 of the present Convention in the following cases:

(a) When the crime is committed in the territory of that State or on board a vessel or aircraft registered in that State;

(b) When the alleged offender is a national of that State. Such jurisdiction shall be independent of the punishability of the act in the place of its commission;

(c) When the alleged offender is present in its territory and it does not extradite him. Such jurisdiction shall be independent of the punishability of the act in the place of its commission.

2. This Convention does not exclude any criminal jurisdiction exercised in accordance with the domestic law.

[Australia was of the view that article 5 followed the approach taken in a range of other multilateral conventions by requiring Contracting States to establish their jurisdiction over the crimes mentioned in article 1, thus imposing a mandatory obligation on States to establish jurisdiction in the situations listed in article 5, paragraph 1. Australia also pointed out that, unlike articles in a number of other conventions, article 5 did not identify situations where States had the discretion to establish their jurisdiction, as was the case, for example, in article 4, paragraph 1 (b) (i), of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988; however, it did impose a mandatory obligation on a State to establish its jurisdiction where an alleged offender was one of its nationals, including in relation to drug trafficking. Australia expressed the concern that those divergent approaches would directly raise the prospect of conflicting obligations on States that were parties to the 1988 Convention and the convention against organized crime.]

[Malta noted that article 5, paragraph 1 (c), might create problems for some States, including Malta, for it bound a State that had not extradited an offender to deal with the case, even if in terms of its law it did not have such jurisdiction, but that problem might be solved through appropriate legislation relating to all offences indicated in article 1.]

[Mexico pointed out that article 5 should take into account national legislation.]

Article 6

1. The offences mentioned in article 1 of the present Convention shall be deemed to be included as extraditable offences in any extradition treaty between the Contracting States. The Contracting States undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it shall consider the present Convention as the legal basis for extradition in respect of the offences mentioned in article 1 of this Convention. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. The Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offences mentioned in article 1 of the present Convention as extraditable offences between them, subject to the conditions provided by the law of the requested State.

4. The Contracting States, subject to their domestic legislation, shall consider simplifying extradition of consenting persons who waive formal extradition proceedings, by allowing direct transmission of extradition requests between appropriate ministries, and extraditing persons based only on warrants of arrests or judgements.

[Cuba proposed to substitute the expression "shall consider" in article 6, paragraph 2, with "could consider".]

[Mexico pointed out that the extradition of those accused of any of the crimes included in the draft framework convention could only be possible in accordance with the provisions of the bilateral extradition treaties signed by the States Parties and their domestic legislation.]

[The Philippines suggested recognizing in article 6, paragraph 2, the offences mentioned in article 1 as extraditable on the basis of the draft framework convention, since its bilateral extradition treaties were only limited to those offences punishable under the laws of both contracting parties; it therefore proposed to add after the words "article 1 of this Convention" the words "and recognized as extraditable offences".]

Article 7

1. Each Contracting State shall consider necessary legislative measures, including extradition of its nationals, if the extradition is requested in respect of any offence defined in article 1 of the present Convention.

2. Extradition of a national may be granted on the condition that the sentence pronounced abroad will be executed in the requesting State.

[Algeria, noting that the provisions of article 7 did not oblige the Contracting State to extradite its nationals, proposed to add the following phrase: "If the requested Party does not extradite its nationals, it shall submit, at the request of the requesting Party, the matter to the competent authorities so that some law enforcement activities could be exercised, as the case may be. To this effect, the complete file of the investigation related to the crime shall be submitted by the requesting Party to the requested Party. The requesting Party shall be informed of the action that shall be taken upon its request."]

[Austria noted that it had certain reservations regarding the extradition of its own nationals.]

[Cuba proposed to delete the sentence "including extradition of its nationals" from article 7, paragraph 1, and suggested the following new formulation for paragraph 2:

"The States Parties shall grant the extradition of their nationals in accordance with their legislation provided that the judgement passed abroad is executed in the requesting State".]

[Cyprus noted that articles 6 and 7 might create some problems where reference to "extraditable offences" and "extradition of its nationals" was made, as its Constitution did not permit the extradition of nationals.]

[Finland pointed out that its legislation only allowed extradition of nationals to member States of the European Union, and that the provision contained in article 7, paragraph 2, did not seem meaningful since reference should be made to the extraditing State rather than to the requesting State. Finally, Finland noted that the idea that the condition concerned a sentence pronounced abroad was too general and that it might be more reasonable to refer to the requesting State.]

[Greece noted that its Constitution did not allow the extradition of nationals.]

[The Islamic Republic of Iran suggested to deleting the sentence "including extradition of its nationals" from article 7, paragraph 1, since its rules prohibited the extradition of nationals who had committed crimes abroad.]

[Mexico noted that its domestic legislation did not allow the extradition of nationals except in those exceptional cases when the extradition of a national was granted by the Government.]

Article 8

1. The offences mentioned in article 1 of the present Convention shall not be considered political offences for the purpose of extradition.

2. Extradition shall not be granted if the present Party has substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that a person's position may be prejudiced for any of these reasons.

[Austria expressed its reservations on article 8.]

[Estonia proposed to add the words "or offences connected with political offences" after the words "political offences".]

[Mexico suggested that the concept "political offence" should be more specific, also taking into account the doctrine of asylum, and that, in article 7, paragraph 2, the expression "credo político" should be replaced with "convicción política" in the Spanish version.]

Article 9

Upon being satisfied that the circumstances so warrant, the Contracting State in whose territory the alleged offender is present shall take a person whose extradition is sought into custody or take other appropriate measures under its domestic law, so as to ensure his presence for the purpose of extradition.

[Algeria considered that the provisions dealing with extradition, included in articles 6 to 9, were not binding enough to facilitate and foster extradition, that being a fundamental tool in international cooperation in criminal matters. Algeria hoped that, in view of the importance of the draft convention, more precise provisions on extradition could be elaborated, also taking into account the relevant provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the Model Treaty on Extradition.]

[Australia considered that the provisions on extradition included in articles 6 to 9 did not represent a comprehensive extradition regime, which was in keeping with the approach taken in other multilateral conventions, particularly, for example, article 6 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, which made it clear that extradition would be governed by the law of the requested State. As far as the extradition of nationals was concerned (article 7), Australia was of the view that any provision of that type would need to take into account the international efforts being made to develop options for addressing bars to extradition of nationals.]

[Ecuador, in connection with articles 6 to 9, noted that its Constitution did not permit the extradition of nationals.]

Article 10

1. The Contracting States shall afford one another the widest measure of mutual legal assistance, within the conditions prescribed by the domestic legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences mentioned in article 1 of the present Convention and exercise flexibility in the execution of request for such mutual assistance.

2. Subject to domestic legislation, legal assistance shall include also the delivery of information constituting bank secrecy.

[Algeria pointed out that the provisions of article 10, paragraph 1, were too general in that the execution of letters and commissions rogatory, the transfer of criminal investigations and the exchange of information were not among the mutual legal assistance measures foreseen. In connection with paragraph 2, Algeria suggested that, if international cooperation in the fight against organized crime was to be successful, transparency in international commercial transactions should be introduced, including through the lifting of bank secrecy.]

[Australia noted that article 10 was very general and proposed to consider a more detailed article, along the lines of, for example, article 7 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, which should make, however, mutual assistance governed by the law of the requested States. Australia also noted that the requirement of article 10, paragraph 1, that States "exercise flexibility in the execution" of requests for mutual legal assistance was not clear and that the same paragraph already called on States to "afford one another the widest measure" of assistance; it pointed out that although States should seek to cooperate fully with requests of assistance, such cooperation could only be provided within the limits of the relevant domestic laws.]

[Austria proposed to replace the wording of article 10 with that of article 7, paragraph 5, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.]

[Ecuador informed that its domestic legislation protected bank secrecy with the exception of investigation related to drug trafficking and money-laundering.]

[Greece noted that it was not clear whether the term "investigations" was related to indictment or simply to police investigations. That might impair the implementation of the convention, considering that there was no common international approach on that issue.]

[Mexico pointed out that it had no problems with the formulation of article 10, paragraph 1, provided that "mutual legal assistance" was meant to be the activity of tribunals or other judicial authorities charged with settling controversies and juridical conflicts between two or more subjects. In connection with bank secrecy, Mexico suggested that the provision of information should always be consistent with the relevant domestic legislation.]

Article 11

1. The Contracting States shall consider entering into bilateral and multilateral agreements including the direct cooperation between their police agencies and common operations in the territory of each Contracting State.

2. The Contracting States shall strengthen cooperation in law enforcement training and crime prevention to facilitate mutual assistance and extradition, such as language training, secondments and exchanges.

3. In the case of existing bilateral and multilateral agreements, the Contracting States shall strengthen efforts to maximize operational and training activities within the International Criminal Police Organization (Interpol) and within other relevant bilateral and multilateral agreements or arrangements.

[Mexico pointed out that, since the issue of law enforcement cooperation was a sensitive one, the sovereignty and self-determination of States should be guaranteed.]

[The Philippines proposed that article 11 should be specific on the subject of bilateral and multilateral agreements that the Contracting States should consider entering into, relevant to the activities dealt with in paragraphs 2 and 3, and that proposals relative thereto should be elaborated by Member States.]

[Spain suggested that, in order to avoid any risk of overlapping, the existence of other similar agreements, such as the Schengen Agreement, should be taken into account.]

Article 12

1. The Contracting States shall consider entering into bilateral and multilateral agreements on the cooperation between or among criminal justice authorities on the exchange of information concerning all aspects of the criminal activity of persons involved in organized crimes, defined in article 1 of the present Convention, including information from their registers of convicted persons.

2. The Contracting States shall facilitate such exchange of information on the basis of their domestic legislation.

3. The Contracting States shall consider the establishment of a common databank on organized criminality, including information on the activities of criminal groups and their members, and information on convicted persons.

4. The collection of information mentioned above shall be carried out with due regard for the need for legal protection of personnel files, as provided for in the domestic and international provisions.

[Australia noted that articles 11 and 12 dealt with cooperation and exchange of information between law enforcement agencies and that the Naples Global Action Plan acknowledged the importance of cooperation between law enforcement agencies, particularly in paragraphs 26 and 27. It also noted that cooperation would need to take place in the context of established channels and in compliance with relevant domestic laws and that article 12, paragraphs 2 and 4, recognized that there would be controls on the flow of information.]

[Austria pointed out that the establishment of a common databank might be hampered by constitutional difficulties.]

[Ecuador proposed to add in article 12, paragraph 3, the words "of restricted access" after the words "databank on organized criminality".]

[Finland suggested to replace in article 12, paragraph 4, the expression "personnel files" with "personnel data files".]

[Mexico pointed out that, in conformity with Economic and Social Council resolution 1995/27, in which the Council had proposed the establishment of an information network and a database, it would accept the exchange of information provided that the information network would not contradict its domestic legislation.]

[Spain noted that article 12, paragraph 3, did not specify the entity responsible for managing the common databank on organized crime and suggested taking into account the existence of the International Criminal Police Organization (Interpol), as well as other existing databanks created within the framework of the Schengen Agreement and the European Union.]

Article 13

The Contracting Parties shall cooperate in the establishment and implementation of their respective witness protection programmes, including the protection of witness families, in particular by creating the possibility of the settlement of a foreign protected witness in their territories.

[Australia noted that the capacity to protect key witnesses was a vital component in dealing effectively with organized crime and that its legislation provided for a National Witness Protection Program, which also allowed for foreign witnesses to be placed on it.]

[Austria pointed out that the matter was still subject to discussion among Member States of the European Union.]

[Cuba proposed to conclude article 13 with the sentence "provided that the will of the receiving State exists".]

[Estonia suggested stressing the importance of the anonymity of witnesses and paying attention to the victims of organized crime.]

[Finland noted that since it was lacking the legislative and technical mechanisms to implement witness protection programmes, it would be impossible to comply immediately with the provisions of article 13.]

[Greece pointed out that article 13 should have foreseen the protection not only of witnesses, but also of other persons participating in criminal proceedings, such as experts, jurors and attorneys.]

Article 14

A Contracting State may adopt more strict or severe measures than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of organized crime.

[Austria noted that article 14 appeared superfluous partly because its provision seemed obvious and partly because it was not clear.]

[Finland pointed out that the aim of article 14 was probably to imply that a Contracting State might undertake even closer cooperation with other States and that an explicit reference to international cooperation would be necessary so that article 14 would not be interpreted as a possibility to deviate from the international guarantees for the protection of human rights.]

Article 15

1. For the purpose of examining the progress made by the Contracting States in achieving the realization of the obligations undertaken in the present Convention, these States will provide periodical reports to the Commission on Crime Prevention and Criminal Justice, which will carry out the functions hereinafter provided.

2. The Contracting States undertake to provide such reports within two years of the entry into force of the Convention for the Contracting State concerned, and thereafter every five years.

3. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Commission with a comprehensive understanding of the implementation of the Convention in the country concerned.

4. A Contracting State which has submitted a comprehensive initial report to the Commission need not, in its subsequent reports submitted in accordance with paragraph 1 of this article, repeat basic information previously provided.

5. The Commission may request from the Contracting States further information relevant to the implementation of the Convention.

6. The Commission shall make its recommendations, and submit to the Economic and Social Council reports on its activities, in accordance with existing provisions.

7. The Contracting States shall make their reports widely available to the public in their own countries.

[Australia accepted, in principle, that there may be value in establishing a reporting mechanism under such a convention and that the resource implications of such a mechanism would need to be carefully assessed.]

[Austria noted that the purpose of article 15, paragraph 7, was not clear.]

[Ecuador pointed out that article 15, paragraph 7, should be consistent with the need to ensure the security of the State and its citizens.]

[Mexico noted that article 15, paragraph 5, could be acceptable provided that it would be left to the requested State to provide further information as specified in paragraph 2.]

Article 16

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) Intergovernmental and non-governmental organizations, in consultative status with the Economic and Social Council, and other invited multilateral organizations, shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Commission may invite the specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Commission shall transmit, as it may consider appropriate, to the intergovernmental, non-governmental organizations, other multilateral organizations and the specialized agencies, any reports from the Contracting States that contain a request, or indicate a need, for technical advice or assistance, along with the Commission's observations and suggestions, if any, on these requests or indications;

(c) The Commission may recommend to the Economic and Social Council that it request the Secretary-General to undertake on its behalf studies on specific issues relating to the control and prevention of organized crime;

(d) The Commission may make suggestions and general recommendations based on information received pursuant to article 14 of the present Convention. Such suggestions and general recommendations shall be

transmitted to any Contracting Party concerned and reported to the Economic and Social Council, together with comments, if any, from the Contracting States.

[Cuba proposed that in article 16, paragraph (a), specific reference should be made to those intergovernmental and non-governmental organizations in consultative status with the Economic and Social Council in accordance with Council resolution 1996/31 and that in paragraph (b) the right of each State Party to decide upon the source of technical advice or assistance should be acknowledged. Cuba also noted that whereas paragraph (d) referred to article 14, it should refer to article 15, which required Contracting States to periodically report on the achievements in the realization of the obligations undertaken in the present Convention.]

[Finland was of the view that article 16 would change significantly the role of the Commission on Crime Prevention and Criminal Justice and place Member States in an interesting position, as it seemed that any consultative organizations would be granted the possibility to participate in the discussions and judge Member States. Finland noted that, while the model behind article 16 might have been the Commission on Human Rights, there were differences between human rights and the structure, nature and grounds of criminal policy.]

[Mexico noted that it would be necessary to establish a mechanism that, while allowing the participation of non-governmental organizations, would guarantee the interest of States.]

Article 17

This Convention shall be open for signature by all States from ---------- to --------, and thereafter at the Headquarters of the United Nations at New York until ---------.

Article 18

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 19

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations after the twentieth instrument of ratification, acceptance, approval or accession.

2. For each Contracting State ratifying, accepting, approving or acceding to the Convention after the deposit of the twentieth instrument of such action, the Convention shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument.

Article 20

1. The Contracting State may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the Contracting States, with a request that they indicate whether they favour a conference of Contracting States for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of Contracting States present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of Contracting States.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other Contracting States still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 21

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by Contracting States at the time of ratification, acceptance, approval or acceding.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

[Cuba suggested that article 21, paragraph 2, should specify the articles for which the reservation was not permitted.]

Article 22

A Contracting Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 23

The Secretary-General of the United Nations is designated as the depository of the present Convention.

Article 24

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.